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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,178	10/23/2003	Thomas Christian Lines	14682-005001	8351

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,178

Applicant(s)

LINES ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 2 contain the phrase "wherein the caffeine is added in pure form". No basis is seen for this limitation.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-29 are rejected under 35 U.S.C. 112; second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 2 are indefinite in the use of the phrase "caffeine is added in pure form". It is not known what is meant by this phrase or what degree of purity is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Gorsek (6,551,629).

Gorsek '629 discloses a composition containing vitamins B3, C and quercetin as in claims 1-3 and the B vitamins and E of claim 4, and green tea which contains caffeine and catechins as in claims 5 and 6 (col. 3, lines 10-50). Green tea is known to contain caffeine. It is not known what is meant by being in pure form.

Claims 1-6, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al. (5,846,569).

Anderson et al. disclose a composition containing quercetin and Vitamin B3 as in claims 1, 2, 3, and the vitamins of claim 4 and Coenzyme Q10 of claim 16 (col. 5, lines 40-65).

The reference also discloses the use of green tea which is seen to contain caffeine, as in claims 5 and 6 and the other ingredients since it is a green tea, and nothing is seen to have been removed from the green tea.

Claims 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. '569.

Anderson et al. '569 disclose the composition as in claims 1-4. The reference also discloses the use of green tea which is seen to contain caffeine, as in claim 5 and the other ingredients since it is a green tea, and nothing is seen to have been removed from the green tea. Therefore, it would have been obvious to use a green tea because it contains the claimed ingredients.

Claims 1-15, 16-25, 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gorsek, '195 in view of Gorsek '629 and further in view of Rosenberg et al. (6,579,544) and Husz (6,277,427), and Pearson (6,261,589) and Xiong et al. (6,299,925)

Gorsek '195 discloses a composition containing quercetin and Vitamin B3 as in claims 1, 2, 3, and the vitamins of claim 4 (col. 3, lines 10-60 and col. 5, lines 30-35).

The composition can be in dry form as in a tablet as in claims 7-9.

Taurine is disclosed as in claims 16-21.

Since the composition is to enhance eyesight, the composition is administered as in claims 22, 23, 24, 25 and 28 as in claims 1-4 above (col. 4, lines 26-30). Claim 1 differs from the reference in the use of caffeine. However Gorsek '629 discloses that it is known to use green tea extract which is known to contain caffeine (col. 1, lines 59-70). Therefore, it would have been obvious to use caffeine in the composition of Gorsek '195 for its known function as a stimulant.

The above claims and claim 2 differ from the reference in the use of caffeine added in pure form. However, no patentable distinction is seen in adding caffeine in pure form absent a showing of unexpected results. Therefore, it would have been obvious to use caffeine to the composition of the combined references for its known functions.

Some other ingredients found in the claims are found in these additional references. Rosenberg et al. further disclose that the use of quercetin is known in dietary supplements, as in claim 1, vitamin E, soy isoflavones, and ginkgo as in claims

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16-21 (col. 19, lines 1-35). Husz discloses a composition containing caffeine, vitamin C, iron, vitamins in beverages, ginko extract as in claims 16-21 in a beverage (abstract). Pearson et al. disclose a composition containing B vitamins, caffeine and green tea in a carbonated mixture (abstract). The reference to Pearson et al. also disclose that taurine as in claims 16-21 and B vitamins along with caffeine is beneficial (col. 6, lines 10-50). Xiong et al. disclose green tea plant extract which is caffeinated with ginko biloba and B vitamins, and vitamin C. (col. 9, lines 30-65, col. 10, line 30). Therefore, it would have been obvious to use various known ingredients as disclosed above for their known function in beverages and supplements meant to improve health.

Nothing new is seen in supplementing various food compositions with vitamins as in claims 1-5 and with a green tea extract as in claim 6 as foods are routinely supplemented with vitamins. It would have been obvious to supplement beverages with green tea extract since the extract is from tea, and teas are generally made from extracts as in extracting tea from tea leaves as in claims 7-15. Therefore, it would have been obvious to supplement foods with vitamins and quercetin.

Claims 26, 27, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to the above claims, and further in view of Anderson et al. '569.

Claims 26, 27, and 29 further require a particular ingredients found in green tea extract. Anderson et al. disclose the use of Green Tea. Nothing is seen that it is not an extract, as teas are generally made from extracted material. Therefore, it would have been obvious to make a composition containing the ingredients of claims 26, 27 and 29

since they are found in green tea, and it would have been obvious to combine it with the above references for the known functions of the ingredients.

Information disclosure statement

Only the references initialed have been received.

ARGUMENTS

Applicant's arguments filed 10-23-2003 have been fully considered but they are not persuasive. Applicants argue that '195 contains green tea extract. However, this compound cannot be found and the reference was not originally used to teach the use of caffeine. The reference does disclose "grape seed extract in col. 4, lines 45 and 46.

Applicants argue that claim 22, and 23 are to a method "for enhancing physical performance". However, since the claimed composition is known, it would have also enhanced physical performance. In addition, this limitation is seen as an intended use.

Applicants argue that the '629 reference is silent as to whether it contains caffeine. However, there is no reason to think that it does as green tea normally contains caffeine as any such tea box will say.

Applicants argue as to Anderson et al. that the caffeine is not in pure form. However, no patentable distinction is seen at this time in the use of a caffeine in green tea and in the pure form.

Applicants argue as to claims 5 and 6 that the caffeine may not be an active ingredient. However, nothing has been shown that it is not, and there is nothing in the composition to keep it from being active.

Applicants argue as to the obviousness rejection in section II that there is no caffeine in pure form. However, as above, nothing has been shown that there are any unobvious results from the use of a pure form. In addition a tea extract can be very powerful, depending on the amount of tea being extracted and the extracting conditions. In addition, no amounts of caffeine have been claimed in order to define over the caffeine in the green tea. Even if amounts were added, some showing would be required as to how much caffeine is found in a green tea extract.

As to mixing the claimed ingredients with quercetin, caffeine, has been shown in the form of green tea extract which is actually found in applicants claim 6.

Applicants argue the same in section III, but the method and composition have been shown as disclosed above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 2-6-06


HELEN PRATT
PRIMARY EXAMINER